

HON. JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT,

Plaintiff,

v.

PRO-FLIGHT AVIATION, INC,

Defendant.

Case No. 2:19-cv-00045-JLR

~~PROPOSED~~ CONSENT DECREE



I. STIPULATIONS

Plaintiff Waste Action Project ("WAP") filed its lawsuit against Pro-Flight Aviation, Inc. ("Pro-Flight Aviation") on January 10, 2019, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Pro-Flight Aviation's industrial facility at 540 West Perimeter Road at the municipal airport of Renton, Washington, and seeking declaratory and injunctive relief, civil penalties, and attorney fees and costs. Pro-Flight Aviation denies the allegations contained in the sixty-day notice and complaint.

WAP and Pro-Flight Aviation agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of

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1 resolving this action.

2 WAP and Pro-Flight Aviation stipulate to the entry of this Consent Decree without trial,
3 adjudication, or admission of any issues of fact or law regarding WAP's claims or allegations set
4 forth in its complaint and its sixty-day notice.

6 Pro-Flight Aviation, Inc.

Waste Action Project

8 By

Diane O. Paholke
Diane Paholke

By

Greg Wingard
Greg Wingard

9 Title:

Title: Executive Director

10 President

11 DATED this 5th December of November, 2019.

12 DATED this 30th of November, 2019.

14 **II. ORDER AND DECREE**

16 THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of Consent
17 Decree and the foregoing Stipulations of the parties. Having considered the Stipulations and the
18 promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:
19

20 1. For purposes of this Decree, this court has jurisdiction over the parties and subject
21 matter of this action.

22 2. Each signatory for the parties certifies for that party that he or she is authorized to
23 enter into the agreements set forth below.

24 3. This Consent Decree applies to and binds the parties and their successors and assigns.

25 4. This Consent Decree applies to the operation by Defendant Pro-Flight Aviation of its
26

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1 Facility at or about 540 W. Perimeter Road, Renton, WA 98057 (the “**Facility**”).

2 5. This Consent Decree is a full and complete settlement of the claims in the Complaint
3 and all other claims known and unknown existing as of the date of entry of this Consent Decree that
4 could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387. These claims are released
5 and dismissed with prejudice. Enforcement of this Consent Decree is WAP’s exclusive remedy for
6 any violation of its terms.
7

8 6. This Consent Decree is a settlement of disputed facts and law. It is not an admission
9 or adjudication regarding any allegations by WAP in this case or of any fact or conclusion of law
10 related to those allegations, nor evidence of any wrongdoing on the part of Pro-Flight Aviation.
11

12 7. Pro-Flight Aviation agrees to the following terms and conditions in full and complete
13 satisfaction of the claims covered by this Decree:

14 A. Pro-Flight Aviation will comply fully with all conditions of its National
15 Pollutant Discharge Elimination System Permit No. WAR002266 (the “**NPDES permit**”)
16 and any successor, modified, or replacement permit, and the stormwater pollution prevention
17 plan (“**SWPPP**”) adopted thereunder, for the duration of the Consent Decree;
18

19 B. Pro Flight Aviation will revise its SWPPP to include the below-described
20 improvements, including treatment, best management practices, and monitoring procedures,
21 within 90 days of implementation. Pro-Flight Aviation will thereafter fully implement the
22 SWPPP for the duration of the Consent Decree.
23

24 a) Pro-Flight Aviation will install stormwater catch basin inserts containing
25 biochar filtration media at all three catch basins within fourteen (14) days following
26 entry of this Decree and will also purchase three sets of replacement media.
27

1 b) For the duration of the Consent Decree, Pro-Flight Aviation will maintain all
2 corrective actions and best management practices (“**BMPs**”), including catch-basin
3 inserts or other media designed to capture or treat pollutants in stormwater, in
4 accordance with maintenance procedures specified by the manufacturer or treatment
5 technology developer.

6
7 c) For the duration of the Consent Decree, Pro-Flight Aviation will ensure that at
8 least two members of Pro-Flight Aviation’s staff are trained in taking stormwater
9 samples and sending them to the laboratory and at least one trained person will be on
10 the premises during Pro-Flight Aviation’s business hours.

11
12 d) Including discharge sampling and analysis required by the Permit, Pro-Flight
13 Aviation will collect and analyze samples (in a manner consistent with Permit
14 requirements) monthly for sampling points where there is discharge for each month
15 from October, 2019, through March, 2020.

16
17 e) During the time period September 2019 through August 2020, Pro Flight will
18 provide to WAP copies of all stormwater discharge sample lab analysis reports;
19 discharge monitoring reports; written (including electronic) documents to and from
20 Ecology pursuant to the NPDES permit; and updated SWPPPs. Documentation will
21 be forwarded to WAP on a quarterly basis no later than the thirtieth day following the
22 end of each calendar quarter. For clarity, stormwater discharge sample lab analysis
23 reports will be submitted at the same time as the discharge monitoring report to which
24 they relate. Failure to timely provide copies required by this paragraph to WAP will
25 not be construed as a material breach of Pro Flight’s obligations under this Consent
26
27

Decree, provided that required copies are provided with reasonable expediency to WAP upon its notice to Pro Flight of such failure.

8. No later than seven (7) days after the entry of this Consent Decree, Pro-Flight Aviation will pay an amount of ONE THOUSAND DOLLARS (\$1,000) to the Duwamish Valley Youth Corps as described in **Exhibit A** to this Consent Decree, for environmental benefit projects benefiting water quality projects in the Green/Duwamish River basin. Payment will be made to the order of and delivered to Duwamish River Cleanup Coalition/Technical Advisory Group, C/O Paulina Lopez, Executive Director, Duwamish River Cleanup Coalition/TAG, 7400 3rd Avenue South, Seattle WA 98108. Payment shall include the following reference in a cover letter or on the check: "Consent Decree, Waste Action Project / Pro-Flight Aviation, Clean Water Act Settlement." A copy of each check and cover letter, if any, shall be sent simultaneously to WAP.

9. Pro-Flight Aviation will pay WAP's reasonable attorney and expert fees and costs in the amount of TWENTY THOUSAND DOLLARS (\$20,000). Payment will be made within seven (7) days of the entry of this Decree by check payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, Washington 98112, attn: Richard Smith. This payment is full and complete satisfaction of any claims WAP may have under the Clean Water Act for fees and costs.

10. A force majeure event is any event outside the reasonable control of Pro-Flight Aviation that causes a delay in performing tasks required by this Decree that cannot be cured by due diligence. Delay in performance of a task required by this Decree caused by a force majeure event is not a failure to comply with the terms of this Decree, provided that Pro-Flight Aviation notifies WAP of the event; the steps that Pro-Flight Aviation will take to perform the task; the projected time that will be needed to complete the task; and the measures that have been taken or will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in completing the task.

Pro-Flight Aviation will notify WAP of the occurrence of a force majeure event as soon as

1 reasonably possible but, in any case, no later than ten (10) business days after the occurrence of the
2 event. In such event, the time for performance of the task will be extended for a reasonable period of
3 time following the force majeure event.

4 By way of example and not limitation, force majeure events include:

- 5 A. Acts of God, war, insurrection, or civil disturbance;
- 6 B. Earthquakes, landslides, fire, floods;
- 7 C. Actions or inactions of third parties over which defendant has no control;
- 8 D. Restraint by court order or order of public authority;
- 9 E. Any permit or other approval sought by Pro Flight from a government
10 authority to implement any of the actions required by this Consent Decree
11 where such approval is not granted or is delayed, and where Pro Flight has
12 timely and in good faith sought the permit or approval:
- 13 F. Strikes; and
- 14 G. Litigation, arbitration, or mediation that causes delay.

15
16 11. This court retains jurisdiction over this matter. While this Decree remains in force,
17 this case may be reopened without filing fee so that the parties may apply to the Court for any further
18 order that may be necessary to enforce compliance with this decree or to resolve any dispute
19 regarding the terms or conditions of this decree. In the event of a dispute regarding implementation
20 of, or compliance with, this Decree, the parties must first attempt to resolve the dispute by meeting to
21 discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be
22 held as soon as practical but must be held within thirty (30) days after notice of a request for such a
23 meeting to the other party and its counsel of record. If no resolution is reached at that meeting or
24 within thirty (30) days of the notice, whichever occurs first, unless extended by mutual written
25 agreement of the parties, either party may file a motion with this court to resolve the dispute. The
26 provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs
27

1 of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially
2 prevailing party, shall apply to any proceedings seeking to enforce the terms and conditions of this
3 Consent Decree.

4 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
5 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five
6 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
7 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent Decree
8 by the parties, WAP shall serve copies of it upon the Administrator of the U.S. EPA and the
9 Attorney General.
10

11 13. This Consent Decree takes effect upon entry by the court. It terminates three years
12 after entry by the court.

13 14. All parties have participated in drafting this decree.

14 15. This Consent Decree may be modified only upon the approval of the court.

15 16. If for any reason the court should decline to approve this Consent Decree in the form
16 presented, this Consent Decree is voidable at the discretion of either party. The parties agree to
17 continue negotiations in good faith to cure any objection raised by the court to entry of this Consent
18 Decree.

19 17. Notifications required by this Consent Decree must be in writing. A notice or other
20 communication regarding this Consent Decree will be effective when received unless the notice or
21 other communication is received after 5:00 p.m. on a business day, or on a day that is not a business
22 day, then the notice will be deemed received at 9:00 a.m. on the next business day. The sending
23 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
24 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized
25 overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other communication
26 regarding this Consent Decree to be valid, it must be delivered to the receiving party at the addresses
27

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1 listed below or to any other address designated by the receiving party in a notice in accordance with
2 this paragraph.

3 **if to WAP:**

4 Waste Action Project
5 P.O. Box 9281
6 Covington, WA 98042
7 gwingard@earthlink.net

8 **and to:**

9 Smith & Lowney PLLC
10 2317 East John St.
11 Seattle, WA 98112
12 richard@smithandlowney.com

13 **if to Pro-Flight Aviation:**

14 Diane Paholke
15 Pro-Flight Aviation, Inc.
16 750 W. Perimeter Road No. 1
17 Renton, WA 98057

18 Mark Myers
19 Bridget Schuster
20 Williams Kastner
21 601 Union Street, Suite 4100
22 Seattle, WA 98101

23 DATED this 31st day of January, 2020.

24 
25 THE HONORABLE JAMES L. ROBART
26 UNITED STATES DISTRICT COURT JUDGE
27